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The Director of Central Intelligence

Washington, D.C. 20505

Honorable Daniel K. Inouye, Chairman
Select Committee on Intelligence
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Serious damage to our foreign intelligence effort is resulting from the unauthorized disclosure of intelligence sources and methods. A spate of recent disclosures and attempted disclosures of sensitive intelligence information by former government officers and employees have caused me grave concern and highlight the need for legislation which provides criminal penalties for such actions.

As you are of course aware, the Director of Central Intelligence is charged by the National Security Act of 1947 with the responsibility for protecting intelligence sources and methods from unauthorized disclosure. This charge is recognition that such disclosures are damaging to the Nation's intelligence effort and must be prevented. If permitted to occur and continue unchallenged and unremedied, intelligence disclosures will lead to the curtailment of information concerning foreign developments affecting our most vital interests. Clearly, some steps must be taken to prevent this from happening. Unfortunately, in my opinion the 1947 Act does not provide for such steps and other options currently available under the law are inadequate.

There are two fundamental problems facing the Intelligence Community and the Department of Justice in this area. First, many unauthorized intelligence disclosures cannot be prosecuted because existing statutes do not clearly proscribe the conduct involved. Thus, a former employee encounters no legal deterrent in his effort, whether well intentioned or not, to expose intelligence secrets in the press. Without a doubt, First Amendment Rights would appear to be involved in such cases. However, to paraphrase Mr. Chief Justice Holmes, an individual does not have the right to shout "fire" in a crowded theater. This famous dictum embodies the principle that important governmental interests limit the exercise of personal rights. Thus, it is my firm conviction that current and former government employees should not be permitted to shout our intelligence secrets to the world, and that narrowly drawn legislation which makes it a crime to do so would withstand legal challenge.

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Secondly, in some cases which appear to fall within current espionage statutes, we face the ironic situation of being called upon to give up the very secrets we wish to protect in order to successfully prosecute. This is so either because the law requires that the showing of damage to the national security be made in open court or because discovery provisions allow the defendant and his counsel to have access to the documents and information in question. Clearly, the more important the secrets, the greater the government's dilemma. I believe a way must be found within the framework of our legal system to limit the disclosures the government must make in the course of such prosecutions.

At present, the sole means by which the government may prevent a current or former employee from disclosing sensitive intelligence information is established by U.S. v Marchetti, 466 F. 2nd 1309 (4th Cir. 1972). In Marchetti, the employee had signed a secrecy agreement by which he agreed to submit any publication dealing with information acquired in the course of his employment to the CIA for review. Because the employee planned to publish a book without doing so the government sought and was granted an injunction which prevented publication until the agreed upon review had been made. The government's deletion of classified material learned in the course of employment and not placed in the public domain was also upheld. In the absence of statutory authority the government's ability to use even this method depends upon acceptance of the Marchetti decision by other federal courts and upon the fortuitous discovery that publication by the current or former employee is planned. Clearly, the government should not have to depend upon such an uncertain remedy in an area so important to the Nation's security interests.

Two recent cases emphasize the inadequacy of existing law as a deterrent to disclosures of intelligence information. The classified enclosure to this letter describes these cases. Unfortunately, they are not isolated instances. I am continually confronted with damaging disclosures, some of which threaten the lives of vulnerable sources.

The President, in a message to Congress of 18 February 1976 included a legislative proposal that would establish criminal penalties for the unauthorized disclosure of intelligence sources and methods. This proposal was subsequently introduced as H.R. 12006, a copy of which is enclosed, but no similar legislation was introduced in the Senate. I would strongly urge that such legislation be considered promptly in the 95th Congress. This bill provides safeguards to protect our

American standards of freedom of information and protection of individual rights while reducing the problems outlined above so as to enable the Government to prosecute cases without risking undue public disclosure of sensitive information.

What those who leak classified information and those who publish it may not fully realize is that in addition to the risks to national security which their actions involve, the disclosures can also result in sizeable monetary costs to the U.S. Government. Such costs are oftentimes difficult to measure, but the fact remains that disclosure of the manner in which certain information is acquired stimulates and enables the target country to take new measures to insure against further U.S. access to data of the type disclosed.

Public disclosure of classified intelligence gives the USSR and other foreign powers keen insight into the capabilities and limitations of our intelligence system. It also undermines the attitude toward security at all levels of Government. If disclosures of our most guarded secrets and our most sensitive sources and methods of collecting intelligence continue to occur, the end result is a loss of faith in the system designed to protect such matters. It threatens the very safety and welfare of those who may be providing us intelligence at a substantial personal risk.

It is a tragedy to see articles in the news media quoting our intelligence reports verbatim without regard to possible damage to sensitive collection programs. The inevitable result of such disclosures can only mean a sharp curtailment of the effectiveness, if not the disappearance of some of our most important intelligence sources, human as well as technical.

I sincerely believe that passage of a bill like H.R. 12006 would be a strong deterrent to exposure of intelligence sources and methods by persons who have such information by virtue of their relationship with the U.S. Government. I would hope that this matter will be the subject of further discussions between the Director of Central Intelligence and your Committee as the 95th Congress begins its work.

Sincerely,

George Bush

Enclosures